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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REVISED DRAFT OPINION

**ON THE FEDERAL LAW
ON COMBATING EXTREMIST ACTIVITY**

OF

THE RUSSIAN FEDERATION

On the basis of comments by

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I. Introduction

1. By a letter of 19 December 2011, the Chair of the Parliamentary Assembly's Monitoring Committee requested the opinion of the Venice Commission on the Russian Federation Federal Law on Combating Extremist Activity (CDL-REF(2012)012, hereinafter "the Extremism Law").

2. The present opinion is based on the English translation of the consolidated version of the Extremism Law, as provided by the Parliamentary Assembly's Monitoring Committee. The translation may not always accurately reflect the original version on all points and, consequently, certain comments can be due to problems of translation.

3. Mr Dimitrijevic, Ms Flanagan and Mr Grabenwarter acted as rapporteurs. The present Opinion is based on their comments and the very limited information provided to the delegation of the Venice Commission during its visit to Moscow on 9-10 February 2012. The Institute for Legislation and Comparative Law under the Government of the Russian Federation provided comments on the law under consideration (CDL(2012)024), which were duly taken into account in the preparation of the Opinion. Some additional clarifications were provided by the representatives of the Russian authorities during a meeting held in Paris on 27 April 2012. Nonetheless, despite these meetings and the considerable efforts made by the rapporteurs, many matters remain unclear.

4. *The present Opinion was discussed by the Sub-Commission on Fundamental Rights during the Commission's 90th plenary Session in March 2012 and subsequently adopted by the Venice Commission at its ... Plenary Session (Venice, ...).*

II. Preliminary remarks

5. The Federal Law on Extremism (Federal Law No. 114 FZ on Combating Extremist Activity) was originally adopted on 25 July 2002, with the aim of defining extremism and extremist activities and providing the authorities of the Russian Federation, at all levels, with legislation for the detection, prevention and suppression of extremist activities. Since 2002, several rounds of amendments were made to the Law (twice in July 2006, May and July 2007 and April 2008). The Law is applicable both to organisations - public, religious and other organisations - and to individuals and needs to be read in conjunction with related provisions of other important laws of the Russian Federation, such as the Criminal Code, the Code of Administrative Offences, the Law on the Federal Security Service (FSB) as well as media and information-related legislation.

6. As it now stands, in addition to provisions devoted to measures available to the authorities for combating and punishing extremism, the Extremism Law contains definitions of extremism-related notions ("extremist organisation", "extremist materials") and an inventory of actions or purposes qualifying an activity as being "extremist", which has evolved over time.

7. The broad interpretation of the notion of "extremism" by the enforcement authorities, the increasing application of the Law in recent years and the pressure it exerts on various circles within civil society, as well as alleged human rights violations reported in this connection have raised concerns and drawn criticism both in Russia and on the international level.¹

¹ "[t]he Law on fighting extremist activity (the Extremism law) continues to raise concern. It was adopted in 2002, but over the last years it has allegedly been increasingly used by the authorities to harass NGOs, journalists, human rights groups, and, in particular some religious groups. We were approached by the representatives of the Jehovah's Witnesses who presented us with a number of documented cases of disruption of religious meetings and other forms of harassment. Criticism about the law stems mainly from the vague definition of key words such as extremism, terrorism and social groups, thus giving enforcement authorities broad latitude in determining which organisations, individuals, and activities are covered by the law".

(http://assembly.coe.int/CommitteeDocs/2011/amondoc09rev_2011.pdf).

8. This Opinion is limited in scope and should not be seen as a comprehensive and detailed review of all the provisions of the Extremism Law. As suggested by the Monitoring Committee in its request, its main purpose is to assess, in the light of the applicable international standards, the definition of “extremism” and the means which are at the disposal of the authorities under the Law, to deal with activities considered “extremist”. Nonetheless, since the analysis of the above-mentioned issues cannot disregard the more general context of the Law, the Opinion also addresses other related provisions of the Law that may raise concern in the light of human rights standards.

9. The Venice Commission is aware of the challenges faced by the Russian authorities in their legitimate efforts to counter extremism and related threats and has taken this fact into account in preparing this Opinion. However, the Commission wishes to underline the critical importance it attaches to the need to ensure full compliance in the adoption, interpretation and implementation of any anti-extremism policies and measures with international standards in the field of the protection of fundamental rights and freedoms of individuals. It recalls that “[an] individual, his rights and freedoms are the supreme value” and that “[r]ecognition, observance and protection of rights and freedoms of individual and citizen shall be an obligation of the state” according to the Constitution of the Russian Federation (Article 2).

10. The Extremism Law defines conduct and activities considered as extremist and provides for administrative and penal measures to be applied against natural and legal persons involved in extremism. Since its adoption, the Extremism Law has been amended several times, reflecting the efforts of the Russian legislator to provide stronger means to combat extremism. The Commission has been informed that new amendments to this law are currently being discussed, at the initiative of the Presidential Council for Civil Society and Human Rights. However the Commission has not been provided with any text by the authorities of the Russian Federation. In the Commission’s view the authorities of the Russian Federation should take the opportunity to improve the Russian Federation’s legal framework pertaining to the fight against extremism, bring it in full compliance with the applicable international standards and enable the Russian authorities effectively to address shortcomings noted in this field, both in the law and in practice.

III. International and European standards related to combating extremism

11. The Law regulates and affects a number of human rights enshrined in customary law and international treaties binding the Russian Federation: the Universal Declaration of Human Rights of 10 December 1948, the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) with its Protocols. These rights are freedom of thought, conscience and religion (Article 18 ICCPR and Article 9 ECHR), freedom of expression (Article 19 ICCPR and Article 10 ECHR) and freedom of assembly and association (Article 22 ICCPR and Article 11 ECHR).

12. The Shanghai Convention on Combating Terrorism, Separatism and Extremism of 15 June 2001 (“Shanghai Convention”)², ratified by the Russian Federation in October 2010, and the International Convention on the elimination of all forms of racial discrimination of 21 December 1965 are also of relevance³.

13. The rights and freedoms guaranteed by Articles 9, 10 and 11 ECHR are qualified and each article contains a limitation clause. No restrictions are permitted other than those expressly listed and such restrictions must have a legitimate aim. Article 18 ECHR prohibits restrictions for

² <http://www.unhcr.org/refworld/publisher,ASIA,,,49f5d9f92,0.html>

³ See also Parliamentary Assembly Recommendation 1933 (2010) on the “Fight against extremism: achievements, deficiencies and failures”.

any purpose other than those for which they have been prescribed. Even if the restriction corresponds to one of the specified reasons in the limitations clause, it must also be “prescribed by law” i.e. have a basis in domestic law, be accessible and sufficiently foreseeable. Both the nature and the quality of domestic legislation are important, as are the interpretation and the application of the law. Furthermore, any limitation must also be “necessary in a democratic society”⁴, i.e. according to the long-established case law of the ECtHR these must correspond to a pressing social need, be proportionate and be relevant and sufficient. The Extremism Law has to be examined in the light of permitted restrictions.

14. According to Article 9 ECHR, any limitations to manifestations of the freedom of thought, conscience and religion may only be motivated by the interests of public safety, by the protection of public order, health or morals, and by the rights and freedoms of others. Article 18 ICCPR is very similar: the freedom of thought, conscience and religion may be restricted if this is necessary to protect “public safety, order, health, morals or the fundamental rights and freedoms of others”. It should be noted that both instruments only address limitations regarding “the freedom to manifest one’s religion or beliefs” and not the substance or contents of such religion or beliefs. According to Article 18.2 ICCPR, “*no one shall be subject to coercion which would impair his freedom to adopt a religion or belief of his choice*”.

15. Under Article 10.2 ECHR, to fulfil the “legitimacy” requirement, limitations to freedom of expression shall only be: “*in the interests of the national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary*”.

16. Restrictions on the exercise of freedom of assembly and association under Article 11 ECHR are allowed if they are “*in the interests of the national security, or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*” Article 11(2) states that the article does not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces and the police and on the administration of the state.

IV. Constitutional background

17. The Constitution of the Russian Federation states in Article 2 that “*An individual, his rights and freedoms, shall be the supreme value*” and guarantees that “*[r]ecognition, observance and protection of rights and freedoms of individual and citizen shall be an obligation of the state*”. Article 17 provides that “*...the rights and freedoms of individual and citizen shall be recognised and guaranteed according to the generally accepted principles and rules of international law and according to the...Constitution*”. The basic rights and freedoms are said to “*...be inalienable and belong to every person from birth*”. However “[*t]he exercise of rights and freedoms of individual and citizen shall not infringe upon the rights and freedoms of other persons*”.

18. Under Article 19 of the Constitution, the State guarantees equal human and civil rights and freedoms irrespective of gender, race, ethnicity/nationality, language, origin, property or employment status, place of residence, religion, convictions, membership of public associations or any other circumstances. Any restrictions of citizens' rights on social, racial, ethnic/national, linguistic or religious grounds are prohibited.

⁴ See *Chassagnou and Others v France*, No. 25088/94, 28331/95 and 28443/95, Judgment of 29 April 1999.

19. Specific guarantees are enshrined in Article 28 for the right to freedom of conscience, freedom of religion, including the right to profess, either alone or together with others, any or no religion, to freely choose, have and disseminate religious or other convictions and to act according to them.

20. Article 29 guarantees freedom of thought and speech. In this context, however, the Constitution of the Russian Federation prohibits propaganda or agitation arousing social, racial, ethnic/national or religious hatred and enmity as well as propaganda of social, racial, ethnic/national, religious or linguistic supremacy.

21. Article 30 provides that "[e]very person shall have the right to freedom of association, including the right to establish trade unions to protect his interests. Free activity of public associations shall be guaranteed".

22. Article 31 provides that "[c]itizens of the Russian Federation shall have the right to meet peacefully, without arms, and to organise discussions, meetings and demonstrations, as well as processions and pickets".

23. At the same time, as stated in Article 13 of the Constitution, the creation and activity of public associations, whose aims and actions are directed at forcibly changing the foundations of constitutional governance, violating the integrity of the Russian Federation and undermining state security, creating armed formations and instigating social, racial, ethnic/national and religious discord, are prohibited.

24. A general restriction clause can be found in Article 55: human and civil rights and freedoms may be restricted by federal law only to the extent needed for certain constitutionally significant purposes, i.e. the foundations of its constitutional system, morals, health, rights and legitimate interests of other persons, and ensuring the defence of the nation and security of the state. Moreover, Article 55 stipulates that the enumeration of fundamental rights and freedoms in the Constitution of the Russian Federation shall not be interpreted as denial of or derogation from other universally recognised rights and freedoms of individual. It is important to point out that, as stipulated by Article 15.4 of the Russian Federation Constitution, "[t]he universally-recognised norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied".

25. Finally, Article 118 provides that "[j]ustice in the Russian Federation shall be administered by courts alone"

V. Specific remarks

A. The definition of "extremism"

26. The European Court of Human Rights (ECtHR) has said in a number of cases that the expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the ECHR not only require that the impugned measure should have some basis in domestic law, but also refer to the quality of the law in question⁵. The law should be both adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual to regulate his or her conduct⁶. The level of precision required of domestic legislation - which

⁵ *Hasan and Chaush v. Bulgaria*, App. No. 30985/96, Judgment of 26 October 2000, para 84.

⁶ *Ibid.* See also: *Sunday Times v. the United Kingdom* (no. 1) judgment of 26 April 1979, Series A no. 30, p. 31, § 49; the *Larissis and Others v. Greece* judgment of 24 February 1998, *Reports* 1998-I, p. 378, § 40; *Hashman and*

cannot in any case provide for every eventuality - depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed⁷. In the case of the Extremism Law, this requirement is extremely important, since infringements of this Law are punished by criminal sanctions and hence the highest degree of certainty is needed in accordance with the principle *nullum crimen, nulla poena sine lege*.

27. The only definition of "extremism" contained in an international treaty binding on the Russian Federation is to be found in the Shanghai Convention. In Article 1.1.1.3) of the Extremism Law, "extremism" is defined as "*an act aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime of a State, as well as a violent encroachment upon public security, including organization, for the above purposes, of illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties*". The latter clause allows signatory states to prosecute such "extremist" actions according to their national laws.

a) "Extremist actions"

28. Article 1 of the Extremism Law provides the following list of extremist activity/extremism⁸:

1. *forcible change of the foundations of the constitutional system and violation of the integrity of the Russian Federation;*
2. *public justification of terrorism and other terrorist activity;*
3. *stirring up of social, racial, ethnic or religious discord;*
4. *propaganda of the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, ethnic, religious or linguistic affiliation or attitude to religion;*
5. *violation of human and civil rights and freedoms and lawful interests in connection with a person's social, racial, ethnic, religious or linguistic affiliation or attitude to religion;*
6. *obstruction of the exercise by citizens of their electoral rights and rights to participate in a referendum or violation of voting secrecy, combined with violence or threat of the use thereof;*
7. *obstruction of the lawful activities of state authorities, local authorities, electoral commissions, public and religious associations or other organisations, combined with violence or threat of the use thereof;*
8. *committing of crimes with the motives set out in indent "f" ["e" in the original Russian] of paragraph 1 of article 63 of the Criminal Code of the Russian Federation;*
9. *propaganda and public show of nazi emblems or symbols or of emblems or symbols similar to nazi emblems or symbols to the point of confusion between the two;*
10. *public calls inciting the carrying out of the aforementioned actions or mass dissemination of knowingly extremist material, and likewise the production or storage thereof with the aim of mass dissemination;*
11. *public, knowingly false accusation of an individual holding state office of the Russian Federation or state office of a Russian Federation constituent entity of having committed actions mentioned in the present Article and that constitute offences while discharging their official duties;*
12. *organisation and preparation of the aforementioned actions and also incitement of others to commit them;*
13. *funding of the aforementioned actions or any assistance for their organisation, preparation and carrying out, including by providing training, printing and material/technical support, telephony or other types of communications links or information services;*

Harrup v. the United Kingdom [GC], no. 25594/94, § 31, ECHR 1999-VIII; and *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000 -V. ; see also *Maestri v. Italy*, no. 39748/98, Judgment of 17 February 2004, para. 30
⁷ *Groppera Radio AG and Others v. Switzerland*, judgment of 28 March 1990, Series A no. 173, p. 26, para. 68. See also see *Kruslin*, 24 April 1990, §§ 24-25; 5. 5. 2011, *Editorial Board of Pravoye Delo u. Shtekel*, 5 May 2011, §§ 63-64

⁸ Numbers (1 to 13) have been added for the purpose of the present Opinion.

28. The Venice Commission notes that the definitions in Article 1 of the Law of the “basic notions” of “extremism” (“extremist activity/extremism”, “extremist organisation” and “extremist materials”) do not set down general characteristics of extremism as a concept. Instead, the Law lists a very diverse array of actions that are deemed to constitute “extremist activity” or “extremism”. This should mean that, according to the Law, only activities defined in Article 1.1 are to be considered extremist activities or fall within the scope of extremism and that only organisations defined in Article 1.2 and materials defined in Article 1.3 should be deemed extremist⁹.

29. The Commission however notes that, while some of the definitions in Article 1 refer to notions that are relatively well defined in comparative law or in other legislative acts of the Russian Federation (i.e. in points 1 and 6), a number of other definitions listed in Article 1 are too broad, lack clarity and may open the way to different interpretations. In addition, while the definition of “extremism” provided by the Shanghai Convention, as well as the definitions of “terrorism” and “separatism”, all require violence as an essential element, certain of the activities defined as “extremist” in the Extremism Law seem not to require an element of violence (see further comments below).

Article 1.1 point 1: “forcible change of the foundations of the constitutional system and violation of the integrity of the Russian Federation”

30. According to the clarification provided by the Russian authorities, the term “forcible” in point 1 governs both “change of the foundations of the constitutional system” and to “violation of the integrity of the Russian Federation”, so that only *forcible* acts aiming at changing the territorial settlement of the country fall under the definition of an extremist activity. According to the Russian Institute for Legislation and Comparative Law, *“It should be noted that “the forcible changing of the foundations of the constitutional order and the violation of the unity of the Russian Federation” the lawmaker is speaking about forcible and violent changes. In other words the means of changing the constitutional order which are provided for in the legislation should not be treated as extremist activities (extremism). Besides, resorting to such means which are not directly mentioned in this law but which do not involve violence must not be considered as extremism. We suppose that it is very important because the expression of a different point of view on the one hand and the forcible changing of the foundations of the constitutional order on the other are quite distinct”*.

31. The Commission notes these observations of the Institute but believes that the regulation of such a sensitive matter as the protection of the integrity of the state requires a high degree of precision. Therefore the Russian authorities should review the language of Article 1.1 point 1 in order to remove the ambiguity that is contained therein. The Commission notes that advocacy of the right to self-determination of peoples or peacefully advocating a different territorial arrangement within a country are generally not considered to be criminal actions, and may on the contrary be seen as a legitimate expression of a person’s views¹⁰.

⁹ According to the information received by the Rapporteurs, the initial list established by the 2002 version of the law (Federal Law No. 114 FZ on Counteraction of Extremist Activities) was expanded in 2006 (Federal Act 27 July 2006 No. 148-FZ) and subsequently shortened in 2007.

¹⁰ See in this respect *Guidelines on political party regulation by OSCE/ODIHR and Venice Commission*, CDL-AD(2010)024, 15-16 October 2010, para. 96: “[...] where allowed at all, prohibition and dissolution are applicable only in extreme cases including the following : threat to the existence and/or sovereignty of the state, threat to the basic democratic order, violence which threatens the territorial integrity of the state, inciting of ethnic, social, or religious hatred, and the use or threat of violence.^{[...]] Even where such reasons for prohibition or dissolution are listed in legislation it is important to note that prohibition must meet the strict standards for legality and proportionality discussed above in order to be justified”; see also ECtHR, *Batasuna v. Spain*, application nos. 25803/04 and 25817/04, Judgment of 30 June 2009).}

Article 1.1 point 2: “public justification of terrorism and other terrorist activity”

32. As concerns the “public justification of terrorism and other terrorist activities” the Venice Commission notes that an already vague term, “extremism”, is defined by reference to another vague term, “terrorism”, without any indication on whether the word “terrorism” is used in some general ordinary meaning or whether it refers to the term defined or as used in other domestic laws or in international law. It is worth recalling that there is no universally accepted definition of “terrorism” in international law, except by reference to some international treaties, such as the International Convention of the Suppression of the Financing of Terrorism¹¹ or the Shanghai Convention (see Article 1§1)¹².

33. It is not clear either why, while the Shanghai Convention defines “terrorism”, “separatism” and “extremism” as three separate phenomena, the Russian legislator has decided to treat them all as “extremist activity/extremism” in the Extremism Law. The Venice Commission notes that in the view of the Russian Institute for Legislation and Comparative Law the main explanation for the inclusion of “public justification of terrorism and other terrorist activities” amongst extremist activities is that terrorism is one of the forms of extremism, namely its extreme form.

34. The Federal Law No. 35-FZ on Countering Terrorism (2006) defines terrorism very broadly as “*the ideology of violence and the practice of influencing the adoption of a decision by state power bodies, local self-government bodies or international organisations connected with frightening the population and (or) other forms of unlawful violent actions*”. This definition is itself not sufficiently clear and appears to contain a number of separate elements. It is not clear whether violence is an essential element of the crime or whether a terrorist purpose is required.

35. The Venice Commission has been informed by the Russian authorities that this definition of “terrorism” applies to all relevant pieces of legislation of the Russian Federation, including the Extremism Law. However this is not stated in the Extremism Law. This is a source of concern particularly since the Law introduces criminal offences and criminal liability for those who have carried out the extremist activity in question (see also §26 above).

36. At the same time, even if it were sufficiently clear which activities are to be considered terrorist, the Law does not indicate what is meant by “justification” of terrorism nor make reference to any definition of the concept in another law of the Russian Federation¹³. The Venice Commission notes in this respect the clarification provided by the Plenum of the

¹¹ The relevant treaty is the 1999 International Convention of the Suppression of the Financing of Terrorism, ratified by the Russian Federation on 27 Nov 2002, which defines as acts of terrorism acts that are described in one of the treaties listed in the annex of the Convention. These treaties are generally believed to be “anti-terrorist”, but do not use the term “terrorist” in their titles. However, the Convention for the Suppression of the Financing of Terrorism is relatively clear when it defines terrorism as “*any other act intended to cause death or serious bodily injury to a civilian or any other person not taking an active part in the hostilities in the situation of armed conflict, when the purpose of such act in its nature or context is to intimidate a population or to compel a government or international organisation to do or abstain from doing any act*” (Article 2 § 1 b).

¹² “1. For the purposes of this Convention, the terms used in it shall have the following meaning: 1) “terrorism” means

a) any act recognized as an offence in one of the treaties listed in the Annex to this Convention (hereinafter referred to as “the Annex”) and as defined in this Treaty;

b) any other act intended to cause death or serious bodily injury to a civilian, or any other person not taking an active part in the hostilities in a situation of armed conflict or to cause major damage to any material facility, as well as to organize, plan, aid and abet such act, when the purpose of such act, by its nature or context, is to intimidate a population, violate public security or to compel public authorities or an international organization to do or to abstain from doing any act, and prosecuted in accordance with the national laws of the Parties”. (Article 1 § 1 of the Shanghai Convention).

¹³ According to a “Note” to article 205.2 of the Russian Criminal Code, “a public justification of terrorism means a public declaration of acceptance of the ideology and practices of terrorism as right and in need of support and imitation.”

Supreme Court of the Russian Federation that academic or political discussion and texts not pursuing the aim of inciting hatred on grounds of gender, race, ethnicity/nationality, language, origin, religious beliefs or affiliation to any social group do not constitute a criminal offence as provided for in Article 282 of the Criminal Code¹⁴. This is of relevance for the question on whether scientific/academic work on the causes of terrorism could be considered to be a "justification" of "terrorist activities". However such an interpretation by the Plenum generally does not suffice to satisfy the Commission that a law is sufficiently precise or foreseeable. In the Commission's view, the fact that it has been necessary for the Supreme Court to formulate such clarifications shows that the wording of the law is not clear.

Article 1.1 point 3 : "stirring up of social, racial, ethnic or religious discord"

37. Extremist activity under point 3 is defined in a less precise manner than in a previous version of the Law (2002). In the 2002 Law the conduct, in order to fall within the definition, had to be "associated with violence or calls to violence". However the current definition ("*stirring up of social, racial, ethnic or religious discord*") does not require violence as the reference to it has been removed. According to non-governmental reports¹⁵, this has led in practice to severe anti-extremism measures under the Extremism Law and/or the Criminal Code. The Venice Commission recalls that, as stated in its Report devoted to the relation between freedom of expression and freedom of religion¹⁶, hate speech and incitement may not benefit from the protection afforded by Article 10 ECHR and justify criminal sanctions. The Commission notes that such a conduct is criminalized under Article 282 of the Russian Criminal Code¹⁷ and that, under Article 282. 2, the use of violence or the threat of its use in committing this crime is an aggravating circumstance.

38. The Venice Commission is of the opinion that in order to qualify "*stirring up of social, racial, ethnic or religious discord*" as "extremist activity", the definition should expressly require the element of violence. This would maintain a more consistent approach throughout the various definitions included in article 1.1, bring this definition in line with the Criminal Code, the Guidelines provided by the Plenum of the Supreme Court¹⁸ and more closely follow the general approach of the concept of "extremism" in the Shanghai Convention.

¹⁴ The Resolution No. 11 of 28 June 2011 (paragraph 8) of the Plenum of the Supreme Court of the Russian Federation states: "Statements of judgment and inference using instances of inter-ethnic, inter-faith or other social relations in academic or political discussion and texts and not pursuing the aim of inciting hatred or enmity or abasing the dignity of an individual or a group of individuals on grounds of gender, race, ethnicity/nationality, language, origin, religious beliefs or affiliation to any social group do not constitute a criminal offence as provided for in Article 282 of the Criminal Code of the Russian Federation."

¹⁵ See <http://www.sova-center.ru/en/>; <http://www.forum18.org/>

¹⁶ [http://www.venice.coe.int/docs/2008/CDL-AD\(2008\)026-e.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)026-e.pdf), paras 50-58

¹⁷ Article 282 of Russia's Criminal Code prohibits "[a]ctions aimed at the incitement of hatred or enmity, as well as abasement of dignity of a person or a group of persons on the basis of sex, race, nationality, language, origin, attitude to religion, as well as affiliation to any social group, if these acts have been committed in public or with the use of mass media." Article 282(1) prohibits the creation of extremist groups, organized to prepare or carry out crimes motivated by "ideological, political, racial, national or religious hatred or enmity" and prohibits "participation in an extremist community".

¹⁸ See also the Resolution of the Plenum of the Supreme Court, § 9 : "In distinction from violent crimes against life and health, provided for by chapter 16 of CCRF, committed in accordance with motives of political, ideological, racial, national, or religious enmity or strife or with motives of hatred or strife with regard to any social group, force used in the commission of a crime provided for by article 282 of CCRF is not only an expression of hatred with regard to a specific victim but is also intended to achieve a special goal—incitement of enmity or strife in other people (which, for example, might be demonstrated by the use of force in public places in the presence of strangers with regard to a victim--or victims--on the basis of membership in a particular race or nationality, accompanied by racist or nationalistic statements)"

Article 1.1 point 4: “propaganda of the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, ethnic, religious or linguistic affiliation or attitude to religion”

39. At first sight, this provision reiterates the usual non-discriminatory clauses in international treaties and national laws, which prohibit a difference in treatment of persons on the basis of their inherent or inherited qualities, such as race, ethnic origin, religion or language. Nevertheless, under the headings contained therein, all kinds of propaganda activities including preaching such difference in treatment, whether or not they are associated with violence or calls to violence, are deemed "extremism".

40. In the view of the Venice Commission, to proclaim as extremist any religious teaching or proselytising activity aimed at proving that a certain worldview is a superior explanation of the universe, may affect the freedom of conscience or religion of many persons and could easily be abused in an effort to suppress a certain church thereby affecting not only the freedom of conscience or religion but also the freedom of association. The ECtHR protects proselytism and the freedom of the members of any religious community or church to "try to convince" other people through "teachings". The freedom of conscience and religion is of an intimate nature and is therefore subject to fewer possible limitations in comparison to other human rights: only manifestations of this freedom can be limited, but not the teachings themselves¹⁹.

41. It therefore appears that under the extremist activity in point 4, not only religious extremism involving violence but also the protected expressions of freedom of conscience and religion may be punishable. This seems to be confirmed by worrying reports of extensive scrutiny measures of religious literature having led, in recent years, to the qualification of numerous religious texts as "extremist material" (see below point (b)).

42. In the Commission's view, the authorities should review the definition under article 1.1 point 4 so as to ensure/provide additional guarantees that peaceful conduct aiming to convince other people to adhere to a specific religion or conception of life, as well as related teachings, in the absence of any direct intent or purpose of inciting enmity or strife²⁰, are not seen as extremist activities and therefore not unduly included in the scope of anti-extremism measures.

Article 1.1 point 5: “violation of human and civil rights and freedoms and lawful interests in connection with a person's social, racial, ethnic, religious or linguistic affiliation or attitude to religion”

43. Extremist activity under point 5 brings together a collection of criteria, the combination of which may or may not be required before establishing their criminality. Clarification is required of what is intended here. If violating rights and freedoms "in connection with a personal's social, racial, ethnic, religious or linguistic affiliation or attitude to religion", in the absence of any *violent* element is an extremist activity, it is clearly a too broad category.

Article 1.1 point 10: “public calls inciting the carrying out of the aforementioned actions or mass dissemination of knowingly extremist material, and likewise the production or storage thereof with the aim of mass dissemination”

44. Similarly, extremist activity under point 10 is a provision that criminalises incitement to extremist activity. This provision is problematic to the extent that certain of the activities listed, as pointed out above, should not fall into the category of extremist activities at all.

¹⁹ Human Rights Committee, *General Comment n° 22: The right to Freedom of Thought, Conscience and Religion*, UN Doc. CCPR/C/21/Rev. 1/Add. 4, 30 July 1993, para. 3.

²⁰ See Resolution of the Plenum of the Supreme Court, § 8.

Article 1.1 point 11: "public, knowingly false accusation of an individual holding state office of the Russian Federation or state office of a Russian Federation constituent entity of having committed actions mentioned in the present Article and that constitute offences while discharging their official duties"

45. Extremist activity in point 11 is of a particularly convoluted nature. In ordinary words, false accusations of extremism are also considered extremism, but this only applies if the victim of the accusation is a state official, not an ordinary citizen for whom one has to rely on the general provisions that cover slander or defamation. Such an approach is contrary to the established practice of the ECtHR, according to which public officials, acting civil servants and other public officials are required to tolerate more criticism than ordinary people²¹. This issue should be addressed by the authorities of the Russian Federation.

46. The latter principle has been reiterated by the Committee of Ministers of the Council of Europe in its Declaration on the Freedom of Political Debate in the Media, according to which "[p]olitical figures should not enjoy greater protection of their reputation and other rights than other individuals, and thus more severe sanctions should not be pronounced under domestic law against the media where the latter criticise political figures"²².

47. It is entirely possible that, in the heat of a political debate, some state officials, including those of the highest rank, could be accused by their political opponents of undermining the security of the Russian Federation through, for example, the defence policy or for having committed other acts mentioned in Article 1.1 of the Extremism Law. Although such accusations might not be examples of good practice, they certainly should not be unduly criminalised. Their criminalisation would endanger the democratic debate on the performance of government officials, which is essential for the preservation of a democratic society.

b) "Extremist materials"

48. According to Article 1.3 of the Extremism Law, "extremist materials" are "documents intended for publication or information on other media calling for extremist activity to be carried out or substantiating or justifying the necessity of carrying out such activity, including works by leaders of the National Socialist worker party of Germany, the Fascist party of Italy, publications substantiating or justifying ethnic and/or racial superiority or justifying the practice of committing war crimes or other crimes aimed at the full or partial destruction of any ethnic, social, racial, national or religious group".

49. This provision defines extremist materials not only as documents which have been published but also as documents intended for publication or information, which call for extremist activity (to be understood, most probably, by reference to the definition of such an activity in Article 1.1) or which justify such activity. The explicit mention of the "works by leaders of the National Socialist Workers' Party of Germany, the Fascist Party of Italy [...]" in the second part of this provision contributes to the better understanding of its first part, provided that the works of Nazi and fascist ideologies are quoted as examples. References to Nazism and fascism are justified and understandable in view of the historical experience of Russia²³, and similar provisions can be found in the legislations of other countries that were exposed to Nazi or fascist occupation and rule.

²¹ *Lingens v. Austria*, 8 July 1986, App. No. 9815/82, para. 42. This principle has later been extended to acting civil servants and other public officials: *Thoma v. Luxembourg*, 29 March 2001, Application No. 38432/97, para. 47.

²² Declaration adopted by the Committee of Ministers of the Council of Europe on 12 February 2004 at the 872nd meeting of the Ministers' Deputies (Article 4).

²³ See e.g. *Refah Partisi and Others v. Turkey*, App. nos. 41340/98, 41342/98, 41343/98 and 41344/98, Judgment of 13 February 2003, para. 124; *Leyla Sahin v. Turkey*, App. No. 44774/98, Judgment of 29 June 2004, para. 109.

50. According to Article 13 of the Law, information materials shall be declared as extremist by court decision, on the basis of a submission by the prosecutor or in proceedings in a corresponding administrative infringement, civil or criminal case. The relevant court decision shall be sent to the federal state registration authority, with a view to the inclusion of the material at issue in a Federal List of Extremist Materials, which is made public on the internet and in the media.

51. Considering the broad and rather imprecise definition of “extremist documents” (Article 1.3), the Venice Commission is concerned about the absence of any criteria and any indication in the Law on how documents may be classified as extremist and believes that this has the potential to open the way to arbitrariness and abuse. The Commission is aware from official sources, that the court decision is systematically based on prior expert review of the material under consideration and may be appealed against in court. It nonetheless considers that, in the absence of clear criteria in the Law, too wide a margin of appreciation and subjectivity is left both in terms of the assessment of the material and in relation to the corresponding judicial procedure. According to non-governmental sources, the Federal List of Extremist Materials has in recent years led to the adoption, in the Russian Federation, of disproportionate anti-extremist measures²⁴. Information on how this list is composed and amended would be necessary for the Commission to comment fully.

c) “Extremist organisation”

52. The definition of an extremist organisation contained in Article 1.2 is circular. According to its provisions, an “extremist organisation” is “*a public or religious association or other organisation in respect of which and on grounds provided for in the present Federal law, a court has made a ruling having entered into legal force that it be wound up or its activity be banned in connection with the carrying out of extremist activity*”. This raises problems with respect to the actions taken by state agencies against non-governmental organisations to which reference will be made later (see under Article 7 below).

53. The Law appears to apply to all types of organisations, including public, religious and mass media ones, as well as to natural persons as is shown by Article 6, on issuing “official warnings”, and Articles 7 and 8 on “written notices”, and Articles 9, 10 and 11 that deal with liability issues. Moreover, the Law imposes duties and responsibilities not only on legal and natural persons of Russian nationality, but also on foreign nationals and stateless persons (see Articles 3, 14 and 15). It appears, however, that the means provided by the Law to counteract extremist activities (written notices and official warnings) may only be directed to organisations or to their heads/editors. According to the interpretation provided by the Russian authorities, an individual cannot be punished for extremism *per se*, unless his or her behaviour falls under the Code of Administrative Offences or the Criminal Code.

B. The means for counteracting extremism

Article 6 – Warnings

54. The means that are available to the authorities, according to the Extremism Law, in order to counteract any “extremist activity” of a public or religious or other organisation may be “preventive” and, subsequently, may consist in the suppression or liquidation of an organisation or the temporary suspension of its activities. The Law devotes considerable attention to the prevention of extremist activities. It exhorts state agencies at all levels to undertake preventive measures (including “educational and publicity measures” as it results from Article 5) as a matter of priority.

²⁴ See http://www.sova-center.ru/en/misuse/reports-analyses/2012/04/d24302/#_ftnref17

55. Under Article 6 of the Law, the Prosecutor-General may, in case there is “*sufficient and previously confirmed information on unlawful acts in preparation presenting the characteristics of extremist activity*” and in the absence of sufficient grounds for bringing criminal prosecution, send a “written warning” to the head of a public, religious or other organisation and other relevant persons, “*to the effect that their activity is inadmissible and that there are concrete grounds for giving a warning*”. Moreover, article 6 states that “*in the event of failure to comply with the demands set out in the warning, the individual issued with that warning may be prosecuted under the established procedure*”. According to the Russian authorities, article 17.7 of the Code of Administrative Offences²⁵ is applicable in this case: “*Wilful failure to satisfy the demands of a prosecutor resulting from his authority established by federal law, as well as the lawful demands of an investigator, an inquirer or an official carrying out proceedings related to an administrative offence shall entail the imposition of an administrative fine on citizens ... and on legal entities ...*”

56. However, it is not clear how the presence of “concrete grounds for issuing warnings” is assessed. According to the Russian Institute of Legislation and Comparative Law, “[a] warning is pronounced if there are no sufficient grounds for criminal prosecution that is if there is no crime proper and before the actions which may later be considered extremist have been committed. Should there exist sufficient grounds for prosecution different steps are to be taken.” So, whilst there does not appear to be an offence under the Criminal Code for failure to obey a warning, there is an administrative offence backed by a fine²⁶. It has been explained to the Commission that if the warning is ignored and the organisation then engages in extremist activities its leaders might be prosecuted for engagement in extremist activities. In this case the court may take the failure to obey the warning into account as an aggravating factor in sentencing.

57. Notwithstanding the above explanations, the Venice Commission is of the view that article 6 lacks clarity and it does appear that an administrative offence is committed where a warning is not obeyed even though no extremist activity has been engaged in. The Law should be reformulated to make it clear that prosecution will only be brought against the person to whom the warning has been addressed if that person has engaged in extremist activity and has committed a criminal act and not for the mere failure to comply with the warning.

58. The Commission further notes that the Law does not provide for any procedure for the person to whom a warning is addressed to challenge the evidence of the Prosecutor-General upon which it is based at the point when the warning is given. Though it is noted that article 6 of the Law provides that the warning may be appealed to a court. It also noted that, according to the law “On the public prosecutor’s service in the Russian Federation”²⁷, a warning about the unacceptability of breaking the law may be appealed against not only in court but also to a superior public prosecutor²⁸.

²⁵ Code of Administrative Offences of The Russian Federation, No. 195-FZ of December 30, 2001 (with the Amendments and Additions of April 25, December 31, 2002, June 30, July 4, November 11, December 8, 2003, April 25, 2002).

²⁶ The Venice Commission notes in this context that the warnings under the FSB law are excepted from the application of sanctions under the new § 4 of Article 19.3 of the Code of Administrative Offences as amended by the 2010 Federal Law no. 238-FZ of 27 July 2010. In addition, pursuant to the Order of November 2, 2010 n°544 (see CDL-RED(2012)022), warnings issued under the FSB Law do not contain any request for a specific conduct.

²⁷ Federal Law of 17.01.1992 N°2202-1 “On the Public Prosecutor’s Service in the Russian Federation”

²⁸ The Commission also notes that under Article 254 of the Civil Procedure Code, any citizen or organisation can sue any government agency, government agency, local self- government, official, civil servant or municipal officer for an action or failure to take action, if he or she believes that his or her rights and freedoms have been violated.

Article 7 - Notices

59. Under Article 7 of the Law, where there are “characteristics of extremism” within the activities of a public, religious or other organisation, another procedure applies. Article 6 covers preparatory acts with characteristics of extremism. Article 7 deals with on-going extremist activities indicated in a “written notice” which, according to the legislator, need to cease within a strict time limit. If the breaches are not removed within the time fixed by the notice, the organisation may be “liquidated”. There is a possibility to appeal the “notice” to a court but if no such appeal is taken or if it is unsuccessful, or if, within 12 months following the date of the notice, there are new facts pointing to the presence of characteristics of extremism within the activities of the public or religious association or other organization, this association or organisation shall be liquidated “*under the procedure established by the present Federal law*” and its activity banned.

60. The Venice Commission has been informed in this connection that, as stipulated by article 9 of the Law dealing with the “[l]iability of public or religious associations or other organisations for the carrying out of extremist activity”, such a decision under article 7 winding up an organisation and banning its activities must be ordered by a court upon application by the Prosecutor General (or a prosecutor subordinated to them or by the federal state registration authority or a respective territorial authority thereof). The Commission nonetheless considers that, to achieve the required legal clarity, the link between article 7 and the procedural rules described in article 9 should be made explicit.

61. The Venice Commission acknowledges that the final decision with regard to the liquidation of an association or organisation having engaged in extremist activities belongs to a court²⁹. It has also noted that, within the Russian Federation legal system, the Prosecutor General enjoys a wide competence of issuing warnings about the unacceptability of breaking the law (art. 25.1 of the law on the public prosecutor’s service). In the Commission’s view, the powers of the public prosecutor and his or her subordinates nonetheless seem to be unduly extended in the sphere of freedom of association - as well as of the freedom of expression. It is unusual for a law enforcement agency to issue warnings and to examine the activity of a non-governmental organisation in the absence of its leaders and without the study of its publicly defined aims and registered statutes. A generally accepted method to prevent freedom of association from being abused for criminal purposes, including the violation of human rights, is to react to its real activities and to conduct proceedings which would determine whether these are prohibited by law.

62. The Venice Commission has already stated³⁰, with regard to the role of Prosecutor-General, that “*there is a very strong argument for confining prosecution services to the powers of criminal prosecution and not giving them the sort of general supervisory powers which were commonly found in “prokuratura” type systems*”. While aware that there are no commonly agreed international standards as to the tasks, functions and organisation of prosecution

²⁹ The Venice Commission wishes to recall that, as indicated by the Committee of Ministers in its Recommendation on the legal status of non-governmental organizations, NGOs should not be subject to direction by public authorities and that “[t]he termination of an NGO or, in the case of a foreign NGO, the withdrawal of its approval to operate should only be ordered by a court”²⁹. Moreover, such an order, which can only be based on clearly specified grounds - bankruptcy, prolonged inactivity or serious misconduct - should be subject to prompt appeal.

³⁰ *Report on European Standards as regards the independence of the judicial system: Part II The Prosecution service*, CDL-AD(2010)040,3 January 2011; see also CDL-JD(2008)001, for an overview of the European practice on this issue see the report by Mr. András Varga for the CCPE (CCPE-Bu(2008)4rev). See also *Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System*, according to which “[w]here public prosecutors are entitled to take measures which cause an interference in the fundamental rights and freedoms of the suspect, judicial control over such measures must be possible”.

service outside the criminal law, the Commission further stressed that any other functions that the prosecutors may exercise must not interfere with or supplant the judicial system in any way.

63. Moreover, the Venice Commission wishes to stress that “liquidation” should occur, in principle, as a last resort or in particularly serious cases³¹ and following a public hearing providing the possibility for the organisation or individual concerned to be aware of and challenge the evidence brought against it or him/her. This does not seem to be clearly provided for in the Extremism Law. Such procedures may be provided for elsewhere in other laws, but the Commission has doubts that a full understanding of the implications of this law with the necessary legal certainty is possible. More generally, in the Commission’s view the Law should be made more specific as to the procedures available in order to guarantee the effective enjoyment of the right to appeal both the warning/the notice issued, and the liquidation or suspension decision before an independent and impartial tribunal, as enshrined in Article 6 ECHR.

64. The Commission has been informed that these procedural aspects will be further clarified as part of the amendment proposals which are under discussion. It encourages the authorities of the Russian Federation to make sure that full attention is paid in this legislative process to the international standards relevant to freedom of association. The Commission recalls that, according to Article 11 ECHR and ECtHR case law, no restrictions may be placed on the exercise of the right to freedom of association “*other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, the protection of public health or morals or the protection of the rights and freedoms of others.*” Restrictions on the freedom of association are to be construed strictly; only convincing and compelling reasons can justify restrictions on the freedom of association.³²

65. Under Article 8, “media outlets” may also be liquidated for failure to eliminate the “violations” pointed out by the notice. It is not clear whether these rules apply to political parties or whether there is a separate law dealing with them, as seems to be the case for the suspension of their activities, referred to in Article 10 of the Law.

66. The Venice Commission received information in relation to specific cases where a particularly broad interpretation of the notion of “extremism” has been taken and of reportedly³³ disproportionate measures taken under the Extremism Law, such as the liquidation of media outlets for carrying out “extremist activities” or for “disseminating “extremist materials”, or adding to the Federal List of Extremist Materials literature of religious communities known to be peaceful. The Extremism Law is reportedly often used against organisations and individuals that are critical of the Government and frequently impairs the rights and freedoms of citizens. It is worrying at the same time that, as a result of the vagueness of the Law and of the wide margin of interpretation left to the enforcement authorities, undue pressure is exerted on civil society organisations, media outlets and individuals, which undoubtedly has a negative impact on the free and effective exercise of human rights and fundamental freedoms.

³¹ See *Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia*, Application no. 74651/01, Judgment of 15 January 2009, para. 76 and *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, Application no. 37083/03, Judgment of 8 October 2009; see also *Korneenko et al. v. Belarus*, (Human Rights Committee), 31 October 2006, Case no 1274/2004. *Belyatsky et al. v. Belarus*, (Human Rights Committee), 24 July 2007.

³² ECtHR, *Gozelik and Others v. Poland*, No. 44158/98, Judgment of 17 February 2004

³³ http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/4_6_jehovahwitnesses_en.pdf; http://www.forum18.org/Archive.php?article_id=1701; http://www.forum18.org/Archive.php?article_id=1652; <http://www.csmonitor.com/2007/0809/p06s01-woeu.html>; <http://www.tdgnews.it/en/?p=3002>; <http://www.osce.org/fom/29576>; http://www.rapsinews.com/judicial_news/20120125/259763485.html; <http://www.sova-center.ru/en/misuse/news-releases/2012/02/d23664/>

67. The Venice Commission has already adopted legal opinions assessing legislation and/or practices relating to official warnings touching upon the freedoms of expression and association³⁴. In this context, while stressing these rights' fundamental importance for any democratic society and their close inter-relation³⁵, the Commission emphasized that the freedom of expression of an association cannot be subject to the direction of public authorities, except for purposes narrowly and clearly defined by the law and necessary in a democratic society. It also recalled that any restriction of these must meet a strict test of justification: "*Any restriction of the right to freedom of association must according to Article 11.2 of the ECHR be prescribed by law and it is required that the rule containing the limitation be general in its effect, that it be sufficiently known and the extent of the limitation be sufficiently clear.*"³⁶ *A restriction that is too general in nature is not permissible due to the principle of proportionality.*³⁷ *The restriction must furthermore pursue a legitimate aim and be necessary in a democratic society"*^{38 39}

68. It is therefore essential, in order for the warnings and notices or any other anti-extremism measures to fully comply with the requirements of Articles 10 and 11 of the ECHR, to ensure that any restrictions that they may introduce to fundamental rights stem from a pressing social need, are proportionate within the meaning of the ECHR and are clearly defined by law. The relevant provisions of the Extremism Law should thus be amended accordingly.

69. Article 16 of the Extremism law prohibits extremist activity during the holding of assemblies. Apart from the difficulties that arise in relation to the definition of "extremist activity" addressed above, this article imposes on organisers of assemblies the obligation of the "timely suppression" of any extremist activity. The article also imposes obligations and liabilities on organisers of an assembly to take steps to eliminate the involvement of extremist organisations, use of their symbols or emblems and the dissemination of extremist materials. Failure to do so shall involve the halting of the assembly. Where a person or organisation organises an assembly which is for extremist purposes, they may be made subject to the law under examination and to the criminal law. However, organisers who arrange a peaceful assembly which is unconnected with extremist activity should not be made liable for failure to perform their responsibilities if they have made reasonable efforts to do so and should not be made liable for the actions of individual participants or *agents provocateurs*. Enforcement of the law is in principle a matter for the police.⁴⁰

70. The Venice Commission notes as a positive development the Resolution No. 11 of 28 June 2011, of the Plenum of the Supreme Court of the Russian Federation, on judicial practice in criminal cases involving extremist offences, in which the Supreme Court, in order to help unify

³⁴ See CDL-AD(2011)0260.

Opinion on the compatibility with universal human rights standards of an official warning addressed by the Ministry of Justice of Belarus to the Belarusian Helsinki Committee (Venice, 17-18 June 2011); CDL-AD(2011)036 *Opinion on the compatibility with universal human rights standards of article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus* (Venice, 14-15 October 2011).

³⁵ See *Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan*, CDL-AD (2011) 035, § 84;

³⁶ See, e.g., ECtHR, *Sunday Times v. UK*, no. 6538/74, Judgment of 26 April 1979, para. 49; ECtHR, *Silver et al. v. UK*, no. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75, Judgment of 25 March 1983, para. 87-88; ECtHR, *Malone v. UK*, no. 8691/79, Judgment of 2 August 1984, para. 66; ECtHR *Groppera Radio AG et al. v. Switzerland*, no. 10890/84, Judgment of 28 March 1990, para. 68; ECtHR, *Autronic AG v. Switzerland*, no. 12726/87, Judgment of 22 May 1990, para. 57.

³⁷ See discussion of Wino J.M. van Veen, Negative Freedom of Association: Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in *The International Journal of Not-for-Profit Law*, Vol. 3, Issue 1, September 2000.

³⁸ See ECtHR, *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, Judgment of 29 April 1999, para 104.

³⁹ (see CDL-AD(2011)036, para 81); see also CDL-AD(2012)007, *Opinion on the Federal Law n°54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketings of the Russian Federation*, §41.

⁴⁰ CDL-AD(2010)020 *OSCE/ODIHR - Venice Commission Guidelines on Freedom of Peaceful Assembly* (2nd Edition p. 12

the judicial practice in this field, gave lower courts a number of recommendations on how to deal with such cases.

71. In its Resolution, the Court *inter alia* drew attention to the fact that criticism of political or religious associations, as well as of national or religious convictions or customs in itself should not be seen as an action intended to incite enmity or strife. The Resolution also makes reference to international law standards establishing that the limits of permissible criticism of political figures are broader than those regarding private individuals. In addition, it addresses a number of procedural issues, including the need for more complex expert analysis, involving specialists in different fields (such as psychologists, historians, religious studies specialists, anthropologists) in the assessment of information materials from the “extremist” perspective.

72. Similarly, the 15 July 2010 Resolution of the Supreme Court Plenum regarding judicial practice related to the Russian Federation Statute on the Mass Media, represents a further attempt to harmonise the relevant judicial practice and to provide more liberal and constructive guidelines, with references to the relevant ECtHR case-law, for the interpretation and the application of the anti-extremist legislation in respect of the media.

73. In the opinion of the Venice Commission, the Resolutions suggest answers to some of the uncertainties which derive from the text of the Extremism Law while implicitly acknowledging the shortcomings in the Law. However, the Commission believes that the Law itself should achieve the required international standards concerning certainty and foreseeability. It welcomes any legislative steps aiming at bringing the Extremism Law fully in line with the applicable standards.

74. The Venice Commission wishes to underline in addition that, apart from improving its provisions and providing the required clarification, the extent to which the Extremism Law is in compliance with the applicable standards depends to a large extent on its actual implementation. The Commission therefore considers that all the necessary measures should be taken to ensure that, in the interpretation and application of the Law by all stakeholders involved, no restriction of fundamental rights and freedoms be allowed other than those expressly permitted by the international instruments to which the Russian Federation is a Party, in particular the ECHR.

75. The Venice Commission further notes that under article 17 of the Law on “International co-operation in the sphere of combating extremism”, the Russian Federation shall co-operate with other states and international organisations engaged in combating extremism “in accordance with the international treaties of the Russian Federation”. In the Commission’s view, this shall include extradition of non-citizens to another state, as provided by the Penal Procedure Code and the Constitution of the Russian Federation and in line with article 11 of the Shanghai Convention.

VI. Conclusions

76. The Venice Commission is aware of the challenges faced by the Russian authorities in their legitimate efforts to counter extremism and related threats. It recalls that, in its recent recommendation devoted to the fight against extremism⁴¹, the Parliamentary Assembly of the Council of Europe expressed its concern over the challenge of fighting extremism and its most recent forms and encouraged the member States of the Council of Europe to take resolute action in this field, “*while ensuring the strictest respect for human rights and the rule of law*”.

⁴¹ “Fight against extremism: achievements, deficiencies and failures”, Parliamentary Assembly Recommendation 1933 (2010)

77. However, the manner in which this aim is pursued in the Extremism Law is problematic. In the Commission's view, the Extremism Law, on account of its broad and imprecise wording, particularly insofar as the "basic notions" defined by the Law - such as the definition of "extremism", "extremist actions", "extremist organisations" or "extremist materials", gives too wide discretion in its interpretation and application, thus leading to arbitrariness.

78. In the view of the Venice Commission, the conduct prohibited by the Extremism Law is not defined with sufficient precision to allow an individual to regulate his or her conduct or the activities of an organisation so as to avoid infringing it. Where definitions are lacking the necessary precision, a law such as the Extremism Law dealing with very sensitive rights and carrying potential dangers to individuals and NGOs can be interpreted in harmful ways. The assurances of the authorities that the negative effects would be avoided thanks to the guidelines of the Supreme Court, the interpretation of the Russian Institute for Legislation and Comparative Law or good faith are not sufficient to satisfy the relevant international requirements.

79. The specific instruments that the Law provides for in order to counter extremism - the written warnings and notices - and the related punitive measures (liquidation and/or ban on the activities of public religious or other organisations, closure of media outlets) raise problems in the light of the freedom of association and the freedom of expression as protected by the ECHR and need to be adequately amended.

80. The Venice Commission recalls that it is of crucial importance that, in a law such as the Extremism Law, which has the capacity of imposing severe restrictions on fundamental freedoms, a consistent and proportionate approach that avoids all arbitrariness be taken. As such, the Extremism Law has the capacity of imposing disproportionate restrictions of fundamental rights and freedoms as enshrined in the European Convention on Human Rights (in particular Articles 6, 9, 10 and 11) and infringe the principles of legality, necessity and proportionality. In the light of the above comments, the Venice Commission recommends that this fundamental shortcoming be addressed in relation to each of the definitions and instruments provided by the Law in order to bring them in line with the European Convention on Human Rights.

81. The Venice Commission remains at the disposal of the Russian authorities should they require assistance.